

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ST. LOUIS POLICE RETIREMENT SYSTEM, *on behalf
of itself and All Others Similarly Situated and
Derivatively on behalf of Nominal Defendant*
ABAXIS, INC.,

Plaintiff,

vs.

CLINTON H. SEVERSON, *et al.*,

Defendants,

ABAXIS, INC.,

Nominal Defendant.

Case No.: 12-CV-5086 YGR

**ORDER RE: FURTHER BRIEFING AND
RESCHEDULING HEARING ON MOTIONS TO
DISMISS**

Currently pending before the Court are: (1) the Motion of Director Defendants Severson, Bastiani, Casey, Evenhuis, Singh Altman And Tucker And Nominal And Company Defendant Abaxis, Inc. To Dismiss the Complaint Pursuant To F.R.C.P 12(B)(1), 12(B)(6), and (2) the Motion of Officer Defendants Severson, Santa Ines, Aron, Ostoich, Wood And Mulroy To Dismiss Count IV of the Complaint Pursuant To F.R.C.P. 12(B)(1), 12(B)(6).

As part of their reply briefing, the Director Defendants submitted a Declaration of Alberto Santa Ines describing, and attaching minutes of, an October 24, 2012 meeting of the Board of Directors (the "Board") and Compensation Committee of the Board (the "Compensation Committee") of Abaxis, Inc. The declaration and minutes indicate that the Board and the Compensation Committee retroactively ratified and approved all Restricted Stock Units ("RSUs") issued in excess of the previous limits under its 2005 Equity Incentive Plan. Board and Compensation Committee further resolved that the "the monetary value of the RSU Share

1 Consideration for each RSU Share is equal to the closing price of the Company's Common Stock
2 on the date of issuance of such RSU Share.”

3 The Court seeks further briefing as to the effect of this action of the Board and
4 Compensation Committee on Plaintiff's claims of damages to the Company (Claims 1, 2 and 3),
5 and the claim for unjust enrichment/restitution from the Officer Defendants (Claim 4).

6 Plaintiff shall file a further brief of no more than 10 pages by **April 16, 2013**. Defendants
7 shall file further briefs in response to the points raised therein, of no more than 6 pages each, by
8 **April 23, 2013**. The hearing currently set for April 9, 2013 is **CONTINUED** to **May 7, 2013**, at 2:00
9 p.m..

10 **IT IS SO ORDERED.**

11 **Date: April 5, 2013**

12 
13 **YVONNE GONZALEZ ROGERS**
14 **UNITED STATES DISTRICT COURT JUDGE**

United States District Court
Northern District of California